

§ 300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, SEAs and LEAs must ensure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to LEAs (See § 300.372).

(b) If the State provides clear and convincing evidence that all children with disabilities have FAPE available to them, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form that provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of FAPE to all children with disabilities. The special study must include statements by a representative sample of organizations that deal with children with disabilities, and parents and teachers of children with disabilities, relating to the following areas—

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating children with disabilities;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relat-

ing to the availability of FAPE for all children with disabilities, including—

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year; and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information that the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have FAPE available to them, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

(Approved by the Office of Management and Budget under control number 1820-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

Subpart F—State Administration

GENERAL

§ 300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) This part may not be construed to limit the responsibility of agencies